

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JAMES A. STACEY, and  
ALBERT W. ALLEN,

Plaintiff(s),

CASE NO.: 4:05-CV-72777-DT

vs.

HON. ROBERT H. CLELAND  
MAG. JUDGE WALLACE CAPEL

ZF LEMFORDER CORPORATION,

Defendant(s).

**ORDER DENYING PLAINTIFFS' RENEWED EMERGENCY MOTION  
TO COMPEL DEPOSITIONS AND/OR FOR RECONSIDERATION**

This matter is before the Court on the Plaintiffs' "Renewed Emergency Motion To Compel Depositions And/Or Motion For Reconsideration," filed on October 17, 2006.

Having reviewed the current motion, the Court is inclined to deny the Plaintiffs' renewed motion and/or request for reconsideration of its ruling made at the hearing held on October 16, 2006, in this matter. In their motion, the Plaintiffs contend that the Court gave the term "managing agent" a more liberal meaning than it should have. Plaintiffs further argue that based upon the deposition of the Chairman of the Board of Directors of ZF Lemforder, Richard Buhl, and Matthias Benz the CFO of ZF Group NAO, the internal auditors were granted a extensive amount of discretion to exercise their judgment in the investigation of the Plaintiffs. Plaintiff further contends that the auditors also made important decisions regarding their investigation. Based upon these factors, they should be considered "managing agents" for the purpose of this case.

A motion for reconsideration will not be granted if the motion "merely present[s] the same issues ruled upon by the court, either expressly or by reasonable implication. The movant must not only demonstrate a palpable defect by which the court and the parties have been misled but also

show that correcting the defect will result in a different disposition of the case.” E.D. Mich. LR 7.1(g)(3). In the instant matter before the Court, the Plaintiffs have not demonstrated any palpable defect by which the Court and the parties were misled, nor has he raised any new issues which would convince the Court to reverse its ruling.

Having reviewed the motion, it appears that Plaintiffs are re-arguing to the Court the same issues that were presented at the hearing, and that they have not provided any new evidence that the internal auditors were “managing agents” in this matter. As stated in the transcript of the hearing, the undersigned does not find that the auditors were “managing agents.” The record does not support the contention that they were making management decisions. The audit report only reflects statements regarding the issues which they were investigating on behalf of the Defendant. The information presented indicates that the auditors presented facts of what they said was wrongdoing. The ultimate decision maker in this matter was not the auditors.

Accordingly, the renewed motion to compel depositions and/or for reconsideration, is hereby **DENIED**. The ruling of the Court on October 16, 2006, shall remain in effect, and an order memorializing the same shall be presented for review and issuance by this Court.

**IT IS SO ORDERED.**

The parties are hereby informed that any objection to this order must be filed with the district court within 10 days after service thereof, pursuant to Rule 72(a), Federal Rules of Civil Procedure.

**DATED: October 26, 2006**

**s/ Wallace Capel, Jr.**  
**WALLACE CAPEL, JR.**  
**UNITED STATES MAGISTRATE JUDGE**

**CERTIFICATION OF SERVICE**

I hereby certify that on **October 26, 2006**, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Malcolm D. Brown, Frank S. Galgan, Michael C. Gibbons, Robert S. Harrison, Matthew D. Klakulak, Scott T. Peterson, Victor A. Veprauskas, IV, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: not applicable.

s/ James P. Peltier  
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